SUPREME COURT, U. S.

FILED
MAY 24 1967
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. ~~1357~~ 130

UNITED STATES OF AMERICA,
Petitioner,

v.

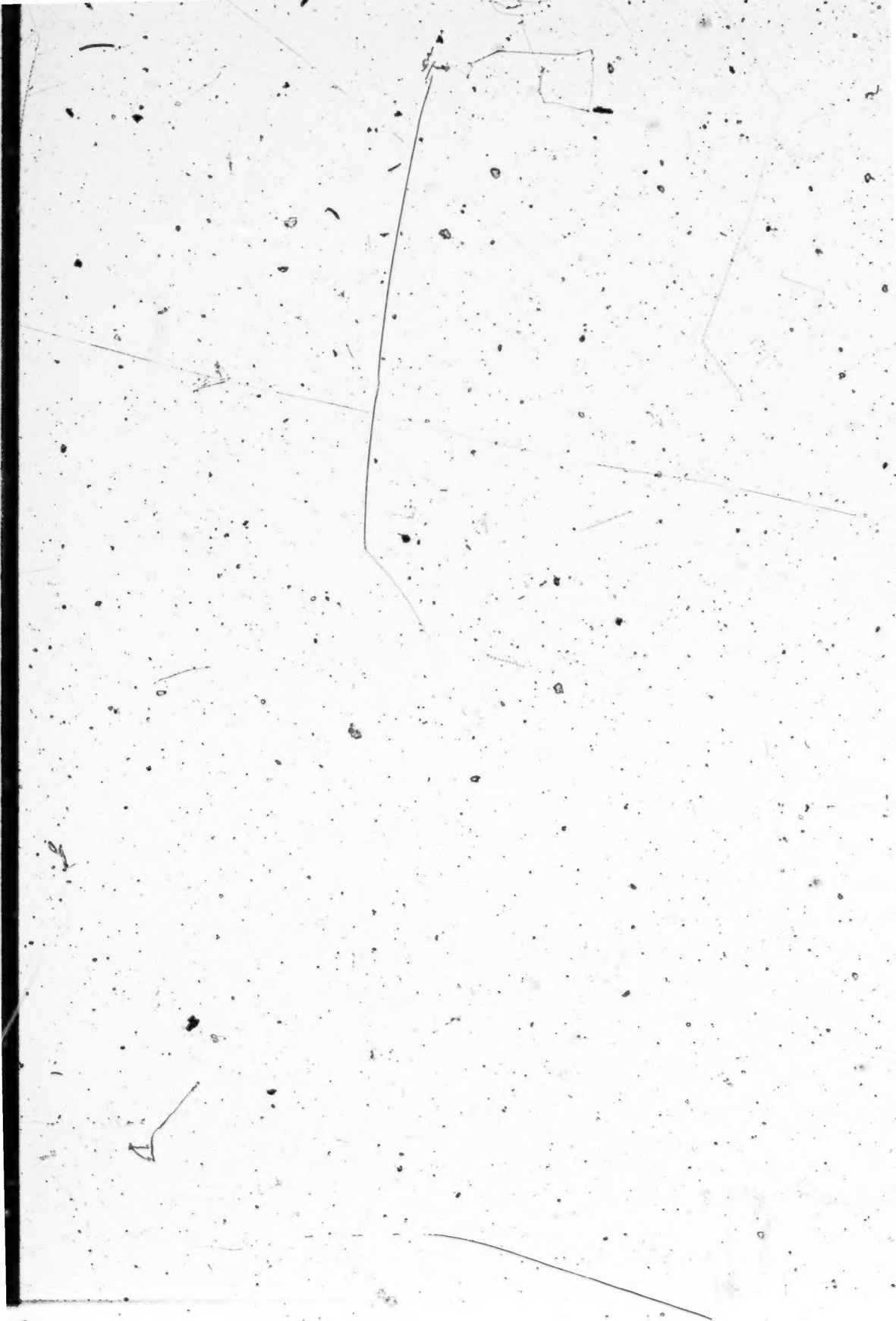
BETHLEHEM STEEL COMPANY,
AND
MORAN TOWING & TRANSPORTATION COMPANY, INC.,
Respondents.

MEMORANDUM FOR RESPONDENTS IN OPPOSITION

DAVID R. OWEN,
10 Light Street,
Baltimore, Maryland 21202,
Attorney for Bethlehem Steel Company, Respondent.

WILLIAM A. GRIMES,
1640 Maryland National Bank Bldg.,
Baltimore, Maryland 21202,
Attorney for Moran Towing & Transportation Company, Inc., Respondent.

The Daily Record Co., Baltimore, Md. 21203



IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 1357

UNITED STATES OF AMERICA,
Petitioner,

v.

BETHLEHEM STEEL COMPANY,
AND
MORAN TOWING & TRANSPORTATION COMPANY, INC.,
Respondents.

MEMORANDUM FOR RESPONDENTS IN OPPOSITION

This case presents the question of whether the United States can recover removal expenses from a negligent shipowner who has abandoned his wrecked vessel to the United States under 33 U.S.C. §§409-415. The Court of Appeals, agreeing with the District Court, held that such an owner has no *in personam* liability. This decision is in accord with an unbroken line of cases, cited by the Court of Appeals (App. 32), in the Second, Third, Fourth, Sixth and Ninth Circuits, as well as in several District Courts, extending from 1923 to 1963. The only decision to the contrary is that of the Fifth Circuit in *United States v. Cargill,*

Inc., 367 F. 2d 971 (5th Cir. 1966), petition for certiorari granted *sub nom. Wyandotte Transportation Co. v. United States*, No. 838, this term.

We submit that the decision below correctly interprets the statute and should be affirmed for the reasons so cogently set forth in the majority opinion of the Court of Appeals (App. 31-38). However, because of the importance of the question, and because of the clear conflict with *Wyandotte*, in which certiorari has been granted, we have no tenable ground for opposing the present Petition and do not do so.

We must, nevertheless, make two points with reference to the Petition. First, it contains an egregious misstatement which we trust will not be permitted to prejudice Respondents. At pages 7-8 the Petition states that the majority of the Court of Appeals "concluded that the dry dock * * * was negligently, rather than intentionally, sunk". A footnote to this sentence compounds the error by stating: "The court of appeals concurred in the district court's finding that respondents had failed properly to inspect the dry dock before it began its journey, and concluded that negligence was the cause of the grounding." As a matter of fact, the majority of the Court of Appeals did not so conclude or so find. To the contrary, the majority specifically refrained from passing on the issue of negligence, saying (App. 38):

> "We do not consider Bethlehem's contention that the finding of negligence on its part was erroneous, for, even if it was negligent, liability cannot be imposed upon it."

Our second reservation with respect to the Petition relates to footnote 4 at page 9, wherein the United States says: "We recognize that the Court may deem it appro-

priate to hold the instant petition pending disposition of No. 838." We wish to object strongly to any such disposition of the Petition, a disposition which would greatly prejudice Respondents. If this is an appropriate case for the granting of the writ, then, we respectfully submit, it should be granted forthwith and the instant case set down for argument in conjunction with *Wyandotte*. Otherwise Respondents will be denied the opportunity to present their own defense, through their own counsel, in their own way. This, we submit, would be unfair and prejudicial to Respondents.

To summarize, we do not oppose the instant Petition, *provided* that the writ is issued and the instant case set down for argument in conjunction with *Wyandotte*.

Respectfully submitted,

DAVID R. OWEN,
Attorney for Bethlehem Steel Company, Respondent.

WILLIAM A. GRIMES,
Attorney for Moran Towing & Transportation Company, Inc., Respondent.

May, 1967